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M E M O R A N D U M:

TO: Chief Circuit and Probate Judges, Family Division
Presiding Judges
cc: Friends of the Court, Family Division
Administrators, Circuit Court Administrators

FROM: John D. Ferry, Jr.

DATE: November 2, 2000

SUBJ: SCAO Administrative Memorandum 2000-08; Allocation and
Distribution of Support Accounts

On October 12, 2000 the Supreme Court found that there was a need for immediate action, suspended the notice requirements of MCR 1.201, and amended Rule 3.208 of the Michigan Court Rules on an interim basis. The amendment is effective January 1, 2001, and continues until further order of the Court.

Pursuant to MCL 400.231 et seq.; MSA 25.307(1) et seq., as amended by 1999 PA 161, the Family Independence Agency is in the process of implementing a new statewide system for the receipt and disbursement of support payments. The interim amendment of Rule 3.208 will ensure that these cases are processed uniformly in the Family Division of the Circuit Court, pending final action by the Supreme Court regarding the proposal to permanently amend Rule 3.208.

Before determining whether the proposal should be adopted on a permanent basis, changed before adoption, or rejected, the Court gave notice to afford any interested person the opportunity to comment on the form or the merits of the proposal.

The interim court rule requires the State Court Administrator to establish guidelines for the purpose of allocating and distributing support.

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These attached guidelines are established on an interim basis pursuant to the interim court rule. The State Court Administrative Office invites comment on the guidelines. Please address all questions or comments to Steven Capps at (517) 373-9318 or by e-mail at cappss@jud.state.mi.us.

attachment

Allocation and Distribution of Support Accounts Interim Guidelines

Except for payments directed to non-support accounts pursuant to Section C, all monies paid on friend of the court accounts shall be allocated to cases according to the Case Allocation Priority (Section B), and distributed according to the Distribution Priority (Section D).

A. Background

FOC offices collect support, divide it among a payer's cases, and distribute it to that payer's support accounts. A case is any item filed with the clerk's office receiving an individual docket number in which an order requires the payment of support, and payments are sent through the friend of the court or state disbursement unit. An account is an amount of money owed for a particular type of obligation.¹ Distribution is an FOC office's determination of how much is to be paid on each account within a single case. When a payer has more than one case, the process of dividing money among cases is called allocation.

More than two-thirds of the cost of administering Michigan's child support program is paid by the federal government under Part IV, Title D, of the Social Security Act, [42 USC 561 et seq]. In exchange, Michigan and its courts, acting as local IV-D enforcement entities, agree to comply with Title IV-D requirements. These requirements dictate the manner in which payments are to be disbursed to recipients on IV-D cases and on cases with income withholding. [42 USC 657]. They also specify how payments must be allocated when income withholding payments are made on multiple obligations [45 CFR 303.100(a)(5)].

Federal law requires income withholding payments to be treated as child support and presumes all other payments are intended as child

¹ Examples of accounts are: current child support owed to an individual or to the state, past-due child support (arrear) owed to an individual, past-due child support (arrear) owed to the state, spousal support, and medical expense reimbursement. Accounts also include things that are technically not child support such as court costs, and statutory fees. Federal regulations require all amounts collected to be first considered child support, unless a specific payment is clearly designated by the support obligor to be for another type of account.

support unless otherwise specified. [45 CFR 303.100(e)(4)]. Federal law requires that all payments on IV-D cases received as child support, regardless of the source of the payment, be distributed first to current child support obligations, then to child support arrearage, and finally to non-support accounts (such as spousal support, fees, costs, etc.). [42 USC 657]. Emphasizing that current monthly support must be paid before arrears can be satisfied, federal child support officials found in a 1995 audit that Michigan's system of distributing income withholding payments based on the amounts in the notices was not in compliance with the requirements of federal law. The auditors concluded that the statewide system must be programmed to insure that current support is paid before money is applied to support arrearage. Because the accounts in question are maintained by the courts, and because the courts agree to be bound by IV-D requirements, MCR 3.208(C)(4) provides that income withholding notices may not direct allocation and disbursement of payments. Federal law mandates support paid by income withholding on both IV-D and non-IV-D cases is to be distributed within a case as required by [42 USC 657], and anticipates similar treatment when support is not paid by income withholding.² When payments are made on non-IV-D cases other than by income withholding, federal law does not specify how the payments must be allocated among a payer's multiple cases. The federal Office of Child Support Enforcement (OCSE) has stated that this is a matter governed by state law.³ According to the OCSE, whether a payer can pay support on one case and not another is also a matter of state law.⁴

This policy treats all cases the same regardless of the source of payment to require that the current month's child support be paid before distributing monies to other accounts and that payments should be distributed in a uniform manner on all cases, regardless of IV-D status and source of payment. This will allow the statewide system to be programmed uniformly and insure that a practice in one friend of the court office does not produce a result that will change the way recipients of support with cases in other offices receive payments. The policy will also incorporate the spirit of the federal legislation that, where possible, it is best to first send monies into the household where the children

² OCSE Action Transmittals 98-24, question A20, and 97-17, question A45.

³ OCSE Action Transmittal 98-24, questions A13 and A15.

⁴ OCSE Action Transmittal 97-13, question A6.

reside. This reasoning should make more money available for the benefit of children for whom support should be paid, increase economic opportunities for their families, and reduce the need for reliance on public assistance.

B. Definitions

Account means an amount of money owed for a particular type of obligation within any single case (e.g. support, medical support, court costs, handling fees, etc.).

Allocation means the process of dividing money among cases when a payer has multiple cases.

Attorney fees mean court ordered reimbursements of attorney or prosecutor fees.

Current month's obligation is the equivalent of all periodic charges or installments that are, or will be, due in the current month.

Case means any item filed with the clerk's office receiving an individual docket number in which an order requires the payment of support, and payments are sent through the friend of the court or state disbursement unit.

Distribution means an FOC office's determination of how much is to be paid on each account within a single case (not between cases).

Fees/costs mean court ordered payments which are of a fee or cost nature (not defined elsewhere in this policy), including: statutory handling fees (\$2/mo), processing fees (\$1.25/mo), court or bench warrant costs, transportation or sheriff's department fees, copying fees, counseling fees, etc.

Genetic testing expense means court ordered payment for reimbursement of costs incurred by the state, county, or party, connected to conducting a blood or tissue typing determination in establishing paternity.

Other statutory support means court ordered payments for expenses statutorily defined as support in addition to support set pursuant to the formula, including: educational expenses; medical, dental, and/or health care expenses; confinement expenses; etc.

Property settlement means court ordered payments which are property settlement in nature including: property settlements, alimony in gross, alimony (non-spousal support) which is property settlement in nature, etc.

Support means court ordered payments for a child pursuant to the child support formula (or a deviation from the formula) or maintenance of a spouse (non-property settlement) including: child support, spousal support, child care expenses, support assigned as foster-care reimbursement, etc.

C. Allocation Among Cases

1. Allocation Rules

All court ordered monies paid on friend of the court accounts shall be allocated among cases as follows:

a. Federal Tax Refund Offset.

All tax refund offset monies shall be allocated to cases certified for tax refund offset in the manner prescribed by the Family Independence Agency - Office of Child Support.

b. One Case - All Payments

If the payer only has one support case, all monies paid shall be allocated to that case.

c. Multiple Cases - Income Withholding Payments

When a payer has more than one case and a source of income makes a payment in connection with an income withholding notice, the payment shall be allocated as follows:

1) To all of the payer's cases if:

- a) The amount paid is the amount set forth in the income withholding notices, whether or not the remittance is designated for all of the payer's cases, or
- b) The remittance is designated for all of the payer's cases, whether or not the

remittance is in the amount contained within the income withholding notice, or

- c) The remittance is designated for less than all of the payer's cases and an income withholding notice was mailed for any missing case more than 21 days before the withholding date.
- 2) To the case(s) designated by the employer if the remittance is the amount ordered to be withheld for the listed case(s) and, if the notice for any missing case was sent 21 days or less before the withholding date.

When the amounts remitted are the same as the amounts contained in the income withholding notices for the cases for which the allocation is being made, the payment should be allocated among cases as set forth in the income withholding notices.

When the amounts remitted are different than the amounts in the income withholding notices for the cases for which allocation is being made, the amounts remitted should be allocated among the cases on a pro-rata basis. The amount allocated to each case is that case's pro-rata share of the remittance based on the amounts in the income withholding notice for the highest account allocation priority level. When all of the amounts required to be remitted pursuant to the income withholding notices for the highest account allocation priority level are satisfied, the remaining money is allocated among the cases based on the amounts set forth in the income withholding notices for the next highest account allocation priority level, continuing this pattern until no money remains to be allocated.

- d. Multiple Cases - Enforcement Action Payments, Third Party

If the payer has more than one case and a payment is received from a third party, in connection with an enforcement action (e.g. levy on lien, bond, bench warrant, garnishment of bank account, etc.) which specifies the payment is intended for a

specific case, monies shall be allocated to the listed case.

e. Multiple Cases - Payments, General

If the payer has more than one child support case, and a payment is received which does not specify any particular case or specifies payment on all of that payer's cases, monies shall be allocated to all the payer's cases.

If the payer has more than one case and a payment is received from the payer or from another individual on behalf of the payer, and the payment:

- 1) Specifies the information required by MCR 3.208(C)(3), the payment shall be allocated among cases as directed. The payer may prepay support in cases in this manner by including a specific written instruction that the payment is a prepayment of support, provided that no support account for the designated case has an arrearage.
- 2) Does not specify all of the information required by MCR 3.208(C)(3), the payment shall be allocated to all cases.

To calculate the amount to be allocated to a specific case, amounts owing at the same account allocation levels on multiple cases must be split on a pro-rata basis between amounts at that level on all of the cases. The ratio to divide the payment is based on all the periodic payment amounts ordered at that level for each case. If periodic arrearage payment amounts are not ordered on a case, the amount calculated by application of the Arrearage Guideline, found in the Michigan Child Support Formula Manual, should be used as the periodic payment amount for that case in calculating the ratio to divide the payment.

2. Account Allocation Priority Levels

The following types of accounts are entitled to priority in the order listed for purposes of allocation of monies among cases:

- a. Periodic amount of current support, excluding spousal support only cases.
- b. Periodic amount to be paid on support arrearage, including reimbursement for confinement expenses, health care expenses, and genetic testing expenses, and excluding any amounts due for spousal support only cases.
- c. All payments on cases that have spousal support only.
- d. Amounts due under the friend of the court act, support and parenting time enforcement act, or other laws specifically directing friend of the court activity (such as statutory fees).
- e. Any other amounts due.

D. Payments Directed to Non-Support Accounts

Not all of a payer's payments are intended to be support payments. For example, divorce case support payers are required to pay a \$2.00 per month statutory fee. [MCL 552.23; MSA 25.103]. Some non-support payments, such as statutory fees, are appropriately paid through the friend of the court office or the state disbursement unit. To direct a payment to a non-support account, the payer must do the following:

For each account where payment is intended, specify the names of the payer and payee, the case number(s), and amounts designated for each non-support account.

E. Distribution Priority

Amounts allocated to specific cases should be distributed according to the following rules, unless they are payments received under the federal tax refund offset program or allocated as Payments Directed to Non-Support Accounts. Amounts allocated to non-support accounts shall be distributed on that account. Amounts paid through the federal tax refund offset program shall be allocated and distributed according to the federal program requirements.

The priority level of an account is determined by the Account Distribution Level list. Payments allocated to a case shall be distributed on a pro-rata basis between all amounts owing at the highest priority level where any balance is owed until all amounts at that level are satisfied.

Once amounts owing on all accounts at the highest account distribution level where any balance is owed are satisfied, the amounts remaining shall be distributed to all accounts where a balance is owed, at the next highest account distribution level.

1. Account Distribution Levels:

a. Support Account types:

- 1) Current month's obligation of support.
- 2) Current month's obligation of other statutory support.
- 3) Support and other statutory support arrearage owed to the custodian.
- 4) Support and other statutory support arrearage owed to a former custodian.
- 5) Support and other statutory support arrearage not owed to the custodian.⁵
- 6) Genetic testing expenses.

b. Non-support account types:

- 1) Amounts due under the friend of the court act, support and parenting time enforcement act, or other laws specifically directing friend of the court activity (such as statutory fees).
- 2) All other non-support accounts.

⁵ When all Un-reimbursed Public Assistance owing to the state is paid, excess arrearages are transferred owing to the higher level category - support arrearage owed to the custodian. Since that level becomes the highest level with a balance owing, it becomes the next level where money gets distributed.